

ARIZONA DEPARTMENT OF TRANSPORTATION
REPORT TO THE TRANSPORTATION BOARD
ON
INTERGOVERNMENTAL AGREEMENTS
BETWEEN
INDIAN NATIONS/TRIBES & THE DEPARTMENT

Introduction:

The Department of Transportation (ADOT) has entered into intergovernmental agreements (IGA) regarding fuel taxes with two Indian tribes. Approximately six other tribes have shown an interest in pursuing the concept. Active negotiations may commence shortly with one of those tribes.

The White Mountain Apache Tribe (WMAT) signed an agreement with ADOT effective May 1998.

The Navajo Nation (NN) signed an agreement in May 1999. Implementation is currently under way.

Background:

In 1997, legislation was passed which specifically granted ADOT the authority to enter into agreements with Indian tribes to provide a method or formula to refund taxes paid on exempt motor fuel purchases or use.

Generally, under Federal provisions, the legal incidence of a tax may not fall on an Indian tribe or on an enrolled member living and purchasing on their own reservation.

Prior to enactment of the 1997 legislation Arizona was experiencing an influx of untaxed fuel onto and through Indian reservations. While the Indian population has certain rights in respect to payment of taxes, other non-Indian purchasers were also benefiting because of the way the Arizona tax was structured.

After the passage of the 1997 legislation, ADOT sent letters to all 21 tribes inviting them to contact the agency regarding potential agreements. The White Mountain Tribe and the Navajo Nation were both bringing tax-free fuel onto their reservations at that time.

Overview of the Agreements:

Each tribe had specific issues that were addressed in lengthy negotiations. Due to the size and geographical location of the Navajo Nation reservation, singular issues were central to these negotiations.

Both of the IGAs represent a negotiated approach taking into consideration the Arizona statutory provisions and the sovereignty of each tribe, as well as the desire, on the part of all concerned, to work together to the benefit of the state and the specific tribe.

Both of the Agreements contain provisions addressing the following:

- Vendors, distributors and the tribes are subject to audit by ADOT.
- Copies of fuel import documents are sent to ADOT on a monthly basis.
- Purchases of fuel off of the reservation for use in tribal vehicles will be refunded upon submission of a refund request with certain specified information.
- Joint enforcement is addressed in an attempt to curtail fuel tax evasion on or through the reservation.
- Safeguards are incorporated in the Agreement for re-negotiation if factors change to materially affect the Agreement such as additional data collection.
- Both tribes have their own tax that equals the state gasoline and light class vehicle diesel rates (18¢ per gallon).

The Agreements are written so that there is flexibility to accommodate Arizona or tribal changes in law within reasonable boundaries.

White Mountain Agreement:

The White Mountain Apache reservation lies entirely within the boundaries of Arizona. The WMAT agreement is based on the fact that all fuel purchased for sale on the reservation is purchased tax paid from a licensed Arizona Supplier. Most of the stations on the reservation are tribally owned. Tax paid on fuel purchased for use in tribal vehicles is refunded upon receipt of requests from the tribal accounting office. Refunds for fuel tax paid on purchases by enrolled members of the tribe living and purchasing on the reservation are based on a formula.

Historically, neither the state nor the tribe has kept records of fuel sold on reservations. As such, to arrive at a reasonable basis for refunding taxes on qualifying fuel sales ADOT has used a formula approach. This concept is used by other states as well. ADOT and WMAT agreed on a formula that reflects number of vehicles, miles per gallon and miles driven. As a result refund monies are sent each month to the WMAT representing tax paid on fuel purchased by enrolled members.

Navajo Nation Agreement:

The Navajo reservation covers portions of three states. This creates a different environment for fuel distribution purposes and the Navajo agreement recognizes this fact.

The basic premise of the Agreement allows the importation of untaxed fuel (Arizona state taxes only) onto the Navajo reservation. The Office of the Navajo Tax Commission requires licensure and reporting by distributors bringing fuel onto the reservation under the agreement. Reporting of fuel imports is submitted monthly for inclusion in the calculation of the Arizona HURF

distribution to the counties and cities. Tax payment for non-exempt fuel sold on the reservation, will be made by the Tax Commission to ADOT on a quarterly basis.

The formula for payment is the reverse of the WMAT agreement. The tax commission will pay a percentage of total fuel sales, as determined under the formula, for sales to non-Navajo purchasers on the reservation.

The Success Story:

The exemption from tax for Native Americans is dictated by Federal law and is not limited to fuel taxes. A 1995 U.S. Supreme Court case clarified the relationship of tax exemption and Indian purchases of fuel. As a result, many states have formalized their relationship with the tribes within their boundaries.

ADOT is very proud of its success to date. Negotiations are long and arduous but are also very fruitful in establishing positive and interactive relationships.

Major goals of entering the negotiations were to establish an environment of mutual trust, to work to curtail fuel tax evasion and to safeguard county and city revenue flow. In addition, the tribes now have additional revenues to support economic growth. The tribes are not restricted in their use of fuel tax revenues. However, there is a need to build and maintain roads not in the state system and to pay for enforcement on those roads. This result can benefit all of the people traveling across or onto reservation land.

The flow of information between the tribes and ADOT, and the enhanced control of the fuel distribution system on and through reservations, are integral elements of the success of these Agreements.